

6-4-2012

Platz v. State Clerk's Record v. 2 Dckt. 39805

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IN THE SUPREME COURT

OF THE

STATE OF IDAHO

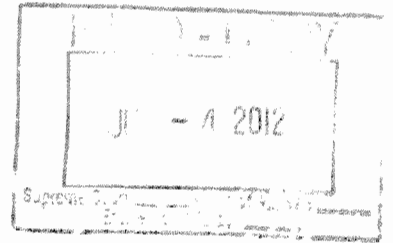
CHAUNCEY JACK PLATZ,

Petitioner-Respondent,

vs.

STATE OF IDAHO,
TRANSPORTATION DEPARTMENT,

Respondent-Appellant.



Appealed from the District Court of the Second
Judicial District of the State of Idaho, in
and for the County of Latah

HON. JOHN R. STEGNER, DISTRICT JUDGE

JAMES E. JOHNSON
ATTORNEY FOR RESPONDENT

EDWIN L. LITTENEKER
Special Deputy Attorney General

ATTORNEY FOR APPELLANT

Filed this ____ day of _____, 2012.

STEPHEN W. KENYON, CLERK

By _____
Deputy

SUPREME COURT CASE NO. 39806-2012

VOLUME I OF I VOLUME

39806

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

IN THE MATTER OF THE DRIVER'S)
LICENSE SUSPENSION OF CHAUNCEY)
JACK PLATZ)
_____)

CHAUNCEY JACK PLATZ,)
Petitioner-Respondent,)

v.)

STATE OF IDAHO, DEPARTMENT)
OF TRANSPORTATION,)
Respondent-Appellant.)
_____)

SUPREME COURT NO. 39806-2012

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Second Judicial District of the State of Idaho,
in and for the County of Latah

HONORABLE JOHN R. STEGNER
District Judge

EDWIN LITTENEKER
SPECIAL DEPUTY ATTORNEY GENERAL
322 MAIN STREET
LEWISTON, ID 83501

ATTORNEY FOR APPELLANT

JAMES E. JOHNSON
604 SOUTH WASHINGTON ST. #3
MOSCOW, ID 83843

ATTORNEY FOR RESPONDENT

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Chauncey Jack Platz vs. Idaho Transportation Department

Date	Code	User		Judge
10/5/2011	NCOC	SUE	New Case Filed - Other Claims	John R. Stegner
	APER	SUE	Plaintiff: Platz, Chauncey Jack Appearance James E. Johnson	John R. Stegner
		SUE	Filing: L3 - Appeal or petition for judicial review or cross appeal or cross-petition from commission, board, or body to district court Paid by: Johnson, James E. (attorney for Platz, Chauncey Jack) Receipt number: 0189032 Dated: 10/5/2011 Amount: \$88.00 (Cashiers Check) For: Platz, Chauncey Jack (plaintiff)	John R. Stegner
	MOTN	SUE	Motion for Stay of Suspension of Commercial Driving Privileges, Pending Judicial Review	John R. Stegner
	ORDR	BETH	Order For Stay of Suspension of Commercial Driving Privileges, Pending Judicial Review	John R. Stegner
10/20/2011	NOAP	SUE	Notice Of Appearance	John R. Stegner
	NOTC	SUE	Notice of Estimate of Transcript Cost	John R. Stegner
	REQU	SUE	Request for Scheduling Conference	John R. Stegner
	APER	SUE	Defendant: Idaho Transportation Department Appearance Edwin L. Litteneker	John R. Stegner
10/21/2011	NOTC	SUE	Notice of Lodging of Agency Record	John R. Stegner
11/2/2011	NOTC	SUE	Notice of Filing Agency Record	John R. Stegner
	MISC	SUE	Agency Record	John R. Stegner
11/17/2011	NOTC	SUE	Notice of Filing Transcript	John R. Stegner
	MISC	SUE	Transcript	John R. Stegner
11/18/2011	HRSC	TERRY	Hearing Scheduled (Appellate Argument 02/16/2012 10:00 AM)	John R. Stegner
11/23/2011	ORDR	SUE	Order Setting Briefing Schedule	John R. Stegner
12/22/2011	MEMO	SUE	Memorandum in Support of Petition for Judicial Review, CDL Disqualification	John R. Stegner
1/20/2012	BREF	SUE	Brief of the Idaho Transportation Department	John R. Stegner
2/2/2012	REPL	SUE	Petitioner's Reply Brief, CDL Disqualification	John R. Stegner
2/16/2012	DCHH	TERRY	Hearing result for Appellate Argument scheduled on 02/16/2012 10:00 AM: District Court Hearing Held Court Reporter: Sheryl L. Engler Number of Transcript Pages for this hearing estimated: less than 40 pages	John R. Stegner
	CTMN	TERRY	Hearing result for Appellate Argument scheduled on 02/16/2012 10:00 AM: Court Minutes	John R. Stegner
3/2/2012	OPIN	SUE	Memorandum Opinion - REMANDED	John R. Stegner
3/21/2012	NTOA	RANAE	Notice Of Appeal	John R. Stegner
3/22/2012	BNDC	RANAE	Bond Posted - Cash (Receipt 193182 Dated 3/22/2012 for 35.75)	John R. Stegner
4/6/2012	MISC	RANAE	S.C. - Notice of Appeal Filed (T)	John R. Stegner

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 882-1362
ISB #6383

CASE NO. CV 2011-1065
2011 OCT -5 AM 11:25
CLERK OF DISTRICT COURT
LATAH COUNTY
BY Do DEPUTY

Attorney for Mr. Platz

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ	)	Case Number CV-2011- <u>1065</u>
Petitioner,	)	Idaho DL # JA387223C
)	
v.	)	PETITION FOR JUDICIAL REVIEW
	)	OF THE SUSPENSION OF
IDAHO TRANSPORTATION	)	COMMERCIAL DRIVING PRIVILEGES
DEPARTMENT,)	
Respondent.	)	Fee Category: L3
_____	)	Fee: \$88.00

Comes now C. Jack Platz, through his attorney James E. Johnson, and petitions
the court for judicial review as follows:

1. Mr. Platz seeks judicial review of the decision of Michael Howell, the Hearing
Officer of the Idaho Transportation Department (ITD), which was signed on September
30, 2011.
2. A copy of the Findings of Fact, Conclusions of Law and Order is attached as
exhibit A.

3. The Petition for Judicial Review is taken to the Second Judicial District in and for the County of Latah.

4. A telephonic hearing was heard before Mr. Howell on September 27, 2011 and was recorded. The recording of the hearing is in the possession of the ITD Hearing Unit, 3311 W. State Street, P.O. Box 7129, Boise, ID 83707-1129. Additional evidence was submitted by the Petitioner by fax transmission and U.S. Mail, but was not considered by the hearing officer at the time of hearing.

5. The issues on judicial review include:

- a. Whether the Hearing Officer erred in sustaining the Notice of Suspension of the commercial driving privileges of C. Jack Platz, in reliance on the ALS suspension found to be sustained by Hearing Officer Skip Carter on August 4, 2011;
- b. Whether C. Jack Platz, during the ALS hearing, met his burden of showing that the law enforcement officer did not follow Idaho State Police Standard Operating Procedures in conducting the breath alcohol test on the day in question such that the test was invalid and Mr. Platz's commercial driving privileges should not be suspended; and
- c. Such issues that may be identified at a later date.

6. A transcript of the proceedings is requested.

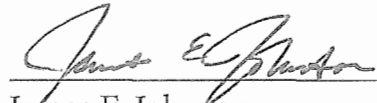
7. I certify that:

- a. The service of the Petition has been made upon the Idaho Transportation Department.
- b. A transcript has been requested from the ITD
- c. ITD has been requested to provide a copy of the record; and

c. Counsel for Petitioner certifies that all costs of preparation of the transcript and record will be paid upon receipt of an estimate for those items.

The Petitioner requests Judicial Review based upon the record created before the ITD. Petitioner further requests that upon receipt of the Record and Transcript this matter be set for a scheduling conference for the purpose of entering an order on briefing and hearing.

Dated this 5th day of October, 2011.


James E. Johnson
attorney for Mr. Platz

Certificate of Service

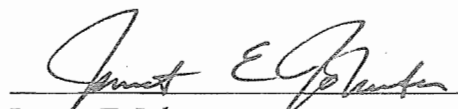
I hereby certify that a true and correct copy of the foregoing document was mailed by regular first class mail to:

Idaho Transportation Department
CDL- ALS Administrative Hearing Unit
3311 W. State Street
P.O. Box 7129
Boise, ID 83707-1129

and by mail and fax to:

Edwin Litteneker
Special Deputy Attorney General
P.O. Box 321
Lewiston, ID 83501
Fax: 208 798 8387

On the 5th day of October, 2011


James E. Johnson

IN THE IDAHO TRANSPORTATION DEPARTMENT

STATE OF IDAHO

In the Matter of the	)	File No. 657A05863731
Driving Privileges of)	
	)	FINDINGS OF FACT AND
CHAUNCEY JACK PLATZ,	)	CONCLUSIONS OF LAW AND
License No. JA387223C	)	PRELIMINARY ORDER
)	

THIS MATTER came on for hearing on September 27, 2011, by telephone conference. The respondent participated in the hearing through his attorney, James E. Johnson.

The Hearing Examiner, having heard the testimony of the witnesses, and having considered the matter herein, and being advised in the premises and the law, makes the following:

FINDINGS OF FACT

I.

Records of the Department, which records were introduced and received in evidence, demonstrate that while driving a non-commercial motor vehicle, respondent failed a test to determine the driver's alcohol concentration administered by a police officer on June 26, 2011, in Latah County, State of Idaho.

II.

Respondent holds a Class A, B or C driver's license.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

I.

Idaho Code, Section 49-335(2), provides that a person is disqualified from operating a commercial motor vehicle for a period of one year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

II.

IDAPA 39.02.70, regulations of the Department of Transportation preclude the issuance of a restricted permit to respondent for commercial driving.

PRELIMINARY ORDER

Based upon the Findings of Fact and Conclusions of Law entered herein the hearing examiner enters the following preliminary order subject to the terms and conditions set forth in Appendix A, which is attached and made a part of this document;

That CHAUNCEY JACK PLATZ is disqualified from operating a commercial motor vehicle for a period of one year pursuant to the provisions of Idaho Code. His class D privileges shall not be affected. The respondent shall not be allowed entry into the restricted license program for commercial driving.

DATED September 30, 2011.



MICHAEL B. HOWELL
Hearing Examiner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30th day of September, 2011, I mailed a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by depositing the same in the United States mail, postage prepaid, addressed to:

CHAUNCEY JACK PLATZ
c/o James E. Johnson, Atty
604 S. Washington St., #3
Moscow, ID 83843



THIS IS A PRELIMINARY ORDER OF THE HEARING OFFICER. It can and will become final without further action of the Hearing Officer unless any party petitions for reconsideration to the Hearing Officer issuing this Preliminary Order or petitions for review to the Director.

Any party may file a petition for the Hearing Officer's reconsideration of this Preliminary Order within fourteen (14) days of the service date of this Order. The Hearing Officer issuing this Preliminary Order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code. (Parties should not combine a petition for reconsideration to the Hearing Officer with a petition for review to the Director. If a party wishes to petition the Director after receiving a ruling from the Hearing Officer on a petition for reconsideration, the petition to the Director should be filed according to the following provisions.)

Within fourteen (14) days after:

- (a) the service date of this Preliminary Order,
- (b) the service date of the Hearing Officer's denial of a petition for reconsideration from this Preliminary Order, or
- (c) the failure within twenty-one (21) days of the Hearing Officer to grant or deny a petition for reconsideration from this Preliminary Order, any party may in writing petition for review or take exceptions to any part of this Preliminary Order and file briefs in support of the party's position on any issue in this proceeding to the Director. Otherwise, this Preliminary Order will become a Final Order of the Department.

If any party petitions for review before or takes exceptions to this Preliminary Order to the Director, opposing parties shall have twenty-one (21) days to respond before the Director to the petition for review or exceptions. Written briefs in support of or taking exceptions to this Preliminary Order shall be filed with the Director. The Director may review this Preliminary Order on its own motion.

If the Director reviews this Preliminary Order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to this Preliminary Order and may schedule oral argument in the matter before issuing a Final Order. The Director will issue a Final Order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter to the Hearing Officer for further evidentiary hearings if further factual development of the record is necessary before issuing a Final Order.

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this Preliminary Order becomes final, any party aggrieved by the Final Order or Orders previously issued in this case may appeal the Final Order and all previously issued Orders in this case to district court by filing a petition in the district court of the county in which:

- (a) A hearing was held,
- (b) The final agency action was taken,
- (c) The party seeking review of the Order resides, or
- (d) The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this Preliminary Order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the Order under appeal.

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 882-1362
ISB #6383

CASE NO. CV 2011-1065

2011 OCT -5 AM 11:31

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *JS* DEPUTY

Attorney for Mr. Platz

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ	)	CV-2011- <u>1065</u>
Petitioner,)	
)	
v.	)	MOTION FOR STAY OF
	)	SUSPENSION OF COMMERCIAL
IDAHO TRANSPORTATION	)	DRIVING PRIVILEGES,
DEPARTMENT,	)	PENDING JUDICIAL REVIEW
Respondent.)	
_____)	


Petitioner, by and through his attorney and pursuant to I.C. § 67-5274,
moves this court for entry of an order staying the execution or enforcement of the
Findings of Fact and Conclusions of Law and Order issued by the Idaho
Transportation Department ("ITD") on September 30, 2011, in ITD File No.
657A05863731 and which sustained the suspension of Petitioner's driving
privileges from July 26, 2011, through July 26, 2012, for alleged failure of
evidentiary testing for alcohol concentration pursuant to I.C. §18-8002A.

Relief is requested upon grounds including, but not limited to, the following:

1. A stay of the Order and suspension of driving privileges is necessary to preserve Petitioner's driving privileges during the pendency of judicial review or appeal. Without such relief, petitioner will be necessarily denied, as a practical matter, the relief which he is seeking by way of his appeal; and
2. A stay is necessary in the interests of justice.

Mr. Edwin Litteneker, the Special Deputy Attorney General, has reviewed this motion and stated that he does not object to it.

Dated October 5, 2011.


James E. Johnson
attorney for Mr. Platz

Certificate of Service

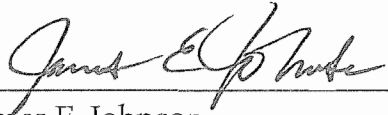
I hereby certify that a true and correct copy of the foregoing document was mailed by regular first class mail to:

Idaho Transportation Department
Administrative Hearing Unit
3311 W. State Street
P.O. Box 7129
Boise, ID 83707-1129

And by mail and fax to:

Edwin Litteneker
Special Deputy Attorney General
P.O. Box 321
Lewiston, Idaho 83501
Fax: 208 798 8387

On the 5th day of October, 2011.



James E. Johnson

during the pendency of judicial review of said order. Petitioner's driving privileges are therefore ordered reinstated during the pendency of judicial review.

DATED this 5th day of October, 2011.

A handwritten signature in cursive script, appearing to read "John R. Stegner", is written over a horizontal line.

JOHN R. STEGNER

DISTRICT JUDGE

CLERK'S CERTIFICATE OF DELIVERY

I CERTIFY that on this 5 day of October 2011, I caused a true and correct copy of the foregoing **ORDER FOR STAY OF SUSPENSION OF COMMERCIAL DRIVING PRIVILEGES, PENDING JUDICIAL REVIEW** to be delivered to the following:

Idaho Transportation Department
Drivers Services
P.O. Box 7129
Boise, ID 83707-1129


☐ Courthouse mail
☐ U.S. mail
☐ hand delivered
☒ faxed 208 332 2002

Jay Johnson
Attorney at Law
604 S. Washington
Moscow, Idaho

☐ Courthouse mail
☐ U.S. mail
☒ hand delivered
☐ faxed

Edwin Litteneker
Special Deputy Attorney General
P.O. Box 321
Lewiston, Idaho 83501

☐ Courthouse mail
☐ U.S. mail
☐ hand delivered
☒ faxed 208 798 8387


Deputy Clerk

Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
322 Main Street
PO Box 321
Lewiston, Idaho 83501
Telephone: (208) 746-0344
Facsimile: (208) 798-8387
ISB No. 2297

CV 2011-1065
CASE NO.
2011 OCT 20 AM 11:37
CLERK OF DISTRICT COURT
LATAH COUNTY
BY *[Signature]* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ,	)	Case No. CV 2011-1065
)	
Petitioner,)	
)	
vs.	)	NOTICE OF APPEARANCE
)	
IDAHO TRANSPORTATION)	
DEPARTMENT,)	
)	
Respondent.)	
_____)	

TO: C. JACK PLATZ, and your attorney JAMES E. JOHNSON.

The appearance of the Department of Transportation is hereby entered in the above-entitled action through the undersigned Special Deputy Attorney General. You are directed to serve all further pleadings or papers, except process, upon the said attorney at his address above stated.

DATED this 19 day of October, 2011.

[Signature]

Edwin L. Litteneker
Special Deputy Attorney General

I DO HEREBY CERTIFY that a true
And correct copy of the foregoing
Document was:

☒ Mailed by regular first class mail,
And deposited in the United States
Post Office

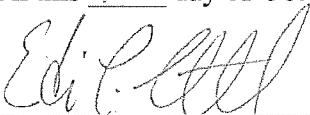
☐ Sent by facsimile

☐ Sent by Federal Express, overnight
Delivery

☐ Hand delivered

To: James E. Johnson
Attorney at Law
604 S. Washington St., #3
Moscow, Idaho 83843

On this 19 day of October, 2011.



Edwin L. Litteneker



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

December 14, 2010

SPECIAL DEPUTY ATTORNEY GENERAL APPOINTMENT

TO WHOM IT MAY CONCERN:

Edwin L. Litteneker, Attorney at Law, P. O. Box 321, Lewiston, Idaho 83501-0321, is hereby appointed Special Deputy Attorney General for the purpose of representing the State of Idaho in any appeal from a hearing officer's decision in Idaho Transportation Department District 2 filed pursuant to the authority of Idaho Code § 18-8002A, Automatic License Suspension Program.

This letter of appointment will be included in the files of any court case, hearing, or other matter in which he represents the State of Idaho in these appeals. This appointment is effective through December 31, 2011.

Any courtesies you can extend to Mr. Litteneker in his conduct of business for the State of Idaho, as my delegate, will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence G. Wasden", written over a horizontal line.

LAWRENCE G. WASDEN
Attorney General

LGW:blm

Beth Schiller
Administrative Assistant, Driver Services
Idaho Transportation Department
3311 West State Street
P.O. Box 7129
Boise, Idaho 83701-1129
Telephone: (208) 334-8755
Facsimile: (208) 332-2002

CV 2011-1065
CASE NO
2011 OCT 21 AM 11:52
CLERK OF DISTRICT COURT
LATAH COUNTY
BY *PS* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

Chauncey Jack Platz,)	
)	
Petitioner,	)	Case No. CV-2011-1065
)	
)	
v.	)	NOTICE OF LODGING
	)	OF AGENCY RECORD
State of Idaho,)	
Department of Transportation)	
)	
Respondent.)	
_____)	


Beth Schiller, Administrative Assistant of the Idaho Transportation Department, hereby gives notice pursuant to I.R.C.P. 84(j) of lodging of the agency record in the above-captioned matter. The parties shall have fourteen (14) days from the date of the mailing of this notice in which to file with the agency any objections. If no objections to the record are filed with the agency within fourteen (14) days, the record shall be deemed settled. Parties may pick up a copy of the record between the hours of 8:00 a.m. and 5:00 p.m. at the Idaho Transportation Department, 3311 West State Street, Boise, Idaho 83703.

The Agency Record consists of the following documents:

<u>Description</u>	<u>Page Number</u>
Notice of Disqualification	1
Request for Hearing	2
Copy of Petitioner's Driver's License Record	3-6
Notice of Telephone Hearing	7
Correspondence	8-12
Findings of Fact and Conclusions of Law and Order	13-15
Petition for Judicial Review	16-21
Motion for Stay of CMV Privileges Pending Judicial Review	22-24
Order for Stay of CMV Privileges Pending Judicial Review	25-27
Correspondence – Transcription Request	28

As of this DATE, October 14, 2011, a Transcript has [x], has not [] been requested by the petitioner or his attorney.

DATED this 14th day of October, 2011.


 Beth Schiller
 Idaho Transportation Department

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

JAMES E. JOHNSON
ATTORNEY AT LAW
604 S. WASHINGTON STREET #3
MOSCOW, ID 83843

X U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX)

EDWIN LITTENEKER
ATTORNEY AT LAW

X ELECTRONIC MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX)



Beth Schiller
Idaho Transportation Department

Beth Schiller
Administrative Assistant, Driver Services
Idaho Transportation Department
3311 West State Street
P.O. Box 7129
Boise, Idaho 83701-1129
Telephone: (208) 334-8637
Facsimile: (208) 332-2002

CASE NO. CV-2011-1065

2011 NOV -2 AM 11:00

CLERK OF DISTRICT COURT
LATAH COUNTY

BY AS DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

Chauncey Jack Platz,)	
)	
Petitioner,	)	Case No. CV-2011-1065
)	
v.	)	NOTICE OF FILING
	)	AGENCY RECORD
State of Idaho,)	
Department of Transportation)	
)	
Respondent.)	
)	

Pursuant to I.R.C.P. 84(k), the attached agency record in the above entitled matter is now deemed settled and is hereby filed.

DATED this 31st day of October, 2011.

Beth Schiller
Beth Schiller
Idaho Transportation Department

CERTIFICATE OF SERVICE


I hereby certify that on this 31st day of October, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

JAMES E. JOHNSON
ATTORNEY AT LAW
604 S. WASHINGTON STREET #3
MOSCOW, ID 83843

X U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX)

EDWIN LITTENEKER
ATTORNEY AT LAW

X ELECTRONIC MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX)


Beth Schiller
Idaho Transportation Department

BETH SCHILLER
ADMINISTRATIVE ASSISTANT, DRIVER SERVICES
IDAHO TRANSPORTATION DEPARTMENT
3311 WEST STATE STREET
POST OFFICE BOX 7129
BOISE ID 83707-1129
TELEPHONE: (208) 334-8755
FACSIMILE: (208) 332-2002

CV-2011-1065
CASE NO

2011 NOV -2 AM 11:00

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *AB* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

Chauncey Jack Platz.

PETITIONER,

v.

STATE OF IDAHO,
DEPARTMENT OF TRANSPORTATION,

RESPONDENT,

CASE No. CV-2011-1065

AGENCY RECORD

THE FOLLOWING IS A LISTING OF THE DOCUMENTS CONSTITUTING THE AGENCY RECORD IN THIS


MATTER:

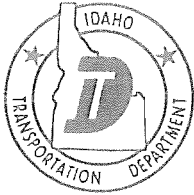
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DATED THIS 31ST DAY OF OCTOBER, 2011.


Beth Schiller
Idaho Transportation Department



IDAHO TRANSPORTATION DEPARTMENT
Driver Services • PO Box 7129
Boise ID 83707-1129

(208) 334-8735
driv@idaho.gov

PHONE: (208) 334-8736

PLATZ, CHAUNCEY JACK

JULY 05, 2011

1080 PLATZ RD
DEARY

ID 83823

LIC#: [REDACTED]
FILE#: 657A05863731
DOB: [REDACTED]

NOTICE OF DISQUALIFICATION

INFORMATION RECEIVED BY THE IDAHO TRANSPORTATION DEPARTMENT SHOW THAT YOU HAVE FAILED/AND OR REFUSED THE EVIDENTIARY TESTING OR HAVE BEEN CONVICTED FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES IN VIOLATION OF IDAHO CODE 18-8004, 18-8004C OR 18-8006.

BY STATUTE, THE IDAHO TRANSPORTATION DEPARTMENT IS WITHDRAWING YOUR DRIVING PRIVILEGES TO OPERATE A COMMERCIAL MOTOR VEHICLE FOR 366 DAYS EFFECTIVE JULY 26, 2011 THROUGH JULY 26, 2012, IDAHO CODE 49-326(1) (A) AND 49-335. NO RESTRICTED PERMIT FOR CDL PRIVILEGES.

YOU MAY REQUEST AN ADMINISTRATIVE HEARING AS TO THE PROCEDURE OF THE DEPARTMENT'S ACTION. A HEARING WILL BE HELD WITHIN 20 DAYS AFTER RECEIPT OF A WRITTEN REQUEST, IDAHO CODE 49-326(4).

AT THE COMPLETION OF THE WITHDRAWAL PERIOD, YOU MAY BE REQUIRED TO PAY A REINSTATEMENT FEE, IDAHO CODE 49-328.

YOUR PRIVILEGE TO DRIVE ANY COMMERCIAL MOTOR VEHICLE IS NOT EFFECTIVE UNTIL YOU HAVE RECEIVED A REINSTATEMENT NOTICE FROM THIS OFFICE.

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 882-1362
ISB #6383

Attorney for the Driver

BEFORE THE IDAHO TRANSPORTATION DEPARTMENT

In the Matter of the Disqualification)
of Commercial Motor Vehicle)
Driving Privileges for:)
Chauncey Jack Platz)
)
)
)
)

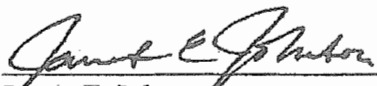
REQUEST FOR HEARING
CDL Privileges
Citation No. ISP0082278
License No. [REDACTED]
DOB: [REDACTED]
Arrest: 6/26/11

The Driver, through attorney James E. Johnson, requests an administrative hearing on the disqualification of his commercial driving privileges, pursuant to I.C. § 49-326 and 49-335, before a hearing officer designated by the Idaho Transportation Department.

The telephone number of James Johnson is 208 882 1357, and the fax number is 208 882 1362.

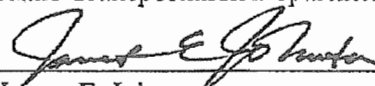
The issues to be presented are: any and all issues provided by Idaho and Federal law, including but not limited to I.C. § 18-8002 and 18-8002A.

Dated September 8, 2011

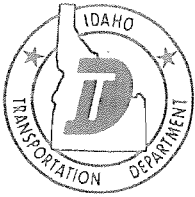

James E. Johnson
Attorney for the Driver

CERTIFICATE OF FAX SERVICE

On September 8, 2011, I faxed this document to the Idaho Transportation Department Drivers Services section at 208 332 4124


James E. Johnson

REQUEST FOR HEARING



IDAHO TRANSPORTATION DEPARTMENT
Driver Services - PO Box 7129
Boise ID 83707-1129

(208) 334-8735
dmv.idaho.gov

50032-IA

(208) 334-8736

REQUESTED BY: PLATZ, CHAUNCEY JACK

PAGE 1

1080 PLATZ RD
DEARY ID 83823

"LEGAL"

D R I V E R L I C E N S E R E C O R D 09/08/2011

FOR:

PLATZ, CHAUNCEY JACK

LICENSE NO: [REDACTED]

ISSUE TYPE: DL

BIRTH DATE: [REDACTED]

CLASS: A -T

1080 PLATZ RD

ISSUED: 06/26/2008

OPR STATUS: VALID

DEARY

ID 83823

EXPIRES: 11/05/2011

CDL STATUS: DISQUAL

DRV TRAIN: NO

RSTR: NONE

TYPE	DATE	DESC	CLS	DOC #
CITN	03/11/02	NO LIAB INS LOC:MISSOURI		
CONV	02/26/03	GLTP PTS:0 CRT:		A00766402
FINE:	0.00	COSTS: 0.00 JAIL DAYS: 0 PROBATION: 0 BAC: .		
MFLM	11/07/03	CDL SKILLS TEST RESULTS		A00761316
MFLM	11/12/03	CDLIS REC. INFORMATION		A00766402
CITN	05/26/05	EM MISC LOC:WASHINGTON		
CONV	06/14/05	GLTP PTS:0 CRT: CMV		A00971078
FINE:	0.00	COSTS: 0.00 JAIL DAYS: 0 PROBATION: 0 BAC: .		
CITN	01/24/07	BASIC RULE LOC:NEZ PERCE		PST:55 CIT: 65
CONV	02/13/07	GLTP PTS:3 CRT:LEWISTON		648ISTAR7046
ORD:	INFR			
FINE:	20.50	COSTS: 41.50 JAIL DAYS: 0 PROBATION: 0 BAC: .		
L99A	08/01/07	HM BKGRND CHK #2		450000000000
COMM	06/26/08	10-YEAR CHECK: ID*MO.		000000000
COMM	07/05/11	STOP 78 DELETED BY: 50050 (DL) 06/28/2011		

CONTINUED

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IDAHO TRANSPORTATION DEPARTMENT
Driver Services • PO Box 7129
Boise ID 83707-1129

(208) 334-8735
dmv.idaho.gov

50032-IA

(208) 334-8736

REQUESTED BY: PLATZ, CHAUNCEY JACK

PAGE 2

1080 PLATZ RD
DEARY ID 83823

"LEGAL"

D R I V E R L I C E N S E R E C O R D 09/08/2011

FOR:

PLATZ, CHAUNCEY JACK

LICENSE NO: [REDACTED]

ISSUE TYPE: DL

BIRTH DATE: [REDACTED]

CLASS: A -T

1080 PLATZ RD

ISSUED: 06/26/2008

OPR STATUS: VALID

DEARY

ID 83823

EXPIRES: 11/05/2011

CDL STATUS: DISQAL

DRV TRAIN: NO

RSTR: NONE

TYPE	DATE	DESC	CLS	DOC #
L196	07/05/11	DIS/FAIL BAC		657A05863731
L02H	07/06/11	TELEPHONE HEARNG		657000082278
L027	07/06/11	ADMIN HEAR CASE		657000082278
L02K	07/18/11	+TIME FOR EVDNCE		657000082278
DISQ	07/26/11	CDLALS08+DRG	OPR	657A05863731
		TO 07/26/12	CDL	
			MFLM	A05863731
SUSP	07/26/11	ALS08+ORDRUG	OPR	657000082278
		TO 10/24/11 STAY 99/99/99	CDL	
		TO 10/24/11 STAY 99/99/99	MFLM	A05863731
L030	08/09/11	STAY		657000082278
COMM	09/08/11	HEARING REQ: 20 110908 HELD: CC YYMMDD ACT: #		000000000
L02I	09/08/11	ADMIN HEAR N/A		657A05863731

CONTINUED

030

004



IDAHO TRANSPORTATION DEPARTMENT

Driver Services • PO Box 7129

Boise ID 83707-1129

(208) 334-8735

dmv.idaho.gov

50032-IA

(208) 334-8736

REQUESTED BY: PLATZ, CHAUNCEY JACK

PAGE 3

1080 PLATZ RD

DEARY

ID 83823

"LEGAL"

D R I V E R L I C E N S E R E C O R D

09/08/2011

FOR:

PLATZ, CHAUNCEY JACK

LICENSE NO: [REDACTED]

ISSUE TYPE: DL

BIRTH DATE: [REDACTED]

CLASS: A -T

1080 PLATZ RD

ISSUED: 06/26/2008

OPR STATUS: VALID

DEARY

ID 83823

EXPIRES: 11/05/2011

CDL STATUS: DISQAL

DRV TRAIN: NO

RSTR: NONE

TYPE DATE DESCCLS DOC #

L021 09/08/11 REQUEST FOR HEAR

657A05863731

12 MONTH POINTS: 0 24 MONTH POINTS: 0 36 MONTH POINTS: 0

POINTS ASSESSED ARE FOR DEPARTMENTAL USE ONLY, IN DETERMINING SUSPENSIONS
FOR POINTS OR HABITUAL VIOLATIONS.

END OF EXISTING RECORD

AS AN EMPLOYEE OF THE TRANSPORTATION DEPARTMENT, I AM AN
OFFICIALLY APPOINTED CUSTODIAN OF DRIVING RECORDS. I
HEREBY CERTIFY THE FOREGOING IS A TRUE AND CORRECT COPY
OF THE ORIGINAL DRIVING RECORDS OF THIS DEPARTMENT.

SEPTEMBER 08, 2011

Jeri L. Day
CUSTODIAN OF DRIVER RECORDS

CONTINUED

031

005



IDAHO TRANSPORTATION DEPARTMENT

Driver Services • PO Box 7129
Boise ID 83707-1129

(208) 334-8735
dmv.idaho.gov

50032-IA

(208) 334-8736

REQUESTED BY: PLATZ, CHAUNCEY JACK

PAGE 4

1080 PLATZ RD
DEARY ID 83823

"LEGAL"

D R I V E R L I C E N S E R E C O R D

09/08/2011

FOR:

PLATZ, CHAUNCEY JACK

LICENSE NO:

BIRTH DATE:

ISSUE TYPE: DL

CLASS: A -T

1080 PLATZ RD

ISSUED: 06/26/2008

OPR STATUS: VALID

DEARY

ID 83823

EXPIRES: 11/05/2011

CDL STATUS: DISQAL

DRV TRAIN: NO

RSTR: NONE

TYPE	DATE	DESC	CLS	DOC #
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SECTION 49-203 IDAHO CODE PROHIBITS THE RELEASE OF PERSONAL INFORMATION CONTAINED IN DRIVER LICENSE RECORDS TO UNAUTHORIZED PARTIES, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE INDIVIDUAL THE INFORMATION PERTAINS TO. AS AN AUTHORIZED REQUESTOR YOU MAY RECEIVE THIS INFORMATION BUT YOU MAY NOT RE-RELEASE OR RE-SELL IT.

END OF DLR PRINT

032

006

TIME RECEIVED	REMOTE CSID	DURATION	PAGES	STATUS
September 13, 2011 2:11:49 PM MDT	208 3311704	39	1	Received
SEP-13-2011(TUE) 14:05	HOWELL & VAIL, LLP	(FAX)208 3311704		P. 001/001



IDAHO TRANSPORTATION DEPARTMENT
Driver Services - P.O. Box 7129
Boise ID 83707-1129

(208) 334-8735
dmv.idaho.gov

Date: September 13, 2011

CHAUNCEY JACK PLATZ
c/o James E. Johnson, Atty
604 S. Washington St., #3
Moscow, ID 83843

Lic/Ident No.: [REDACTED]
File No.: 657A05863731
Date of Birth: [REDACTED]

NOTICE OF TELEPHONE HEARING

A hearing will be held pursuant to your request regarding the suspension or disqualification of your driving privileges for the reason set out in the Notice of Disqualification dated July 5, 2011.

The hearing will be conducted by telephone conference call on September 27, 2011 at 1:00 p.m. (mountain time). The telephone call will be placed to:

(X) your attorney: James E. Johnson, Atty
at telephone #: (208) 882-1357

If this telephone number is incorrect or none is listed, immediately contact Evelyn at (208) 336-3331, extension 121. If you fail to provide a telephone number, it will be concluded that you failed to appear at the hearing. Failure to appear will result in a determination being made in your absence.

The hearing officer presiding at the hearing will be:

Michael B. Howell
380 South Fourth Street, Suite 104
Boise, ID 83702.

The hearing will be conducted according to the provisions of Title 67, Chapter 52, Idaho Code, and the rules of practice and procedures of the Idaho Transportation Department. This hearing provides you or your attorney an opportunity to appeal on your behalf. If you need further assistance, please call (208) 336-3331.



IDAHO TRANSPORTATION DEPARTMENT

Driver Services • PO Box 7129
Boise ID 83707-1129

(208) 334-8735
dmv.idaho.gov

September 8, 2011

Michael B. Howell
Howell & Vail
380 S. 4th Street, Suite 104
Boise, ID 83702

Re: In the matter of the Driving Privileges of Chauncey Jack Platz, DL #JA387223C.

Dear Mr. Howell:

This letter is to confirm that you will be representing the Idaho Transportation Department as an Administrative Hearing Officer in the above matter. The driver's privileges are currently withdrawn for CDL Disqualification due to Admin Lic Susp BAC .08+ I.C. 49-324 & 49-335(2).

Please schedule the hearing within 20 days of the date of the hearing request received date and send notice of the hearing to the driver/attorney of the date, time and telephone number you will call for the hearing. The notice of hearing and copy of the driver's file needs to be mailed seven days prior to the scheduled hearing.

Enclosed is a copy of the Administrative Record in this matter. The Administrative Record includes all documents on file with the Department. Specifically this file contains:

- Administrative Hearing Case Sheet
- Hearing Request Received Letter
- Request for Hearing (1 Page)
- File Copy of Notice of Disqualification
- Notice of Administrative License Suspension from Latah County
- Screen Print of Disqualification Abstract
- Complete Driver License Record (4 Pages)

If any further information is necessary regarding this record, please contact this office at (208) 334-8705.

Sincerely,

Danny E. Reed
Technical Records Specialist



IDAHO TRANSPORTATION DEPARTMENT
Driver Services • PO Box 7129
Boise ID 83707-1129

(208) 334-8735
drsoo32ho.gov

PHONE: (208) 334-8736

PLATZ, CHAUNCEY JACK

SEPTEMBER 08, 2011

1080 PLATZ RD
DEARY

ID 83823

LIC#: [REDACTED]
FILE#: 657A05863731
DOB: [REDACTED]

ADMINISTRATIVE HEARING CASE SHEET - NON ALS

ATTORNEY'S INFORMATION

ATTORNEY'S NAME: JAMES E JOHNSON
ADDRESS: 604 S WASHINGTON ST #3

MOSCOW
IDAHO

83843

PHONE NUMBER: 208-882-1357

DRIVER'S INFORMATION

PHONE NUMBER:

REASON: CDL ALS BAC .08+.DRUGS/INTOX SUBS I.C. 49-335.(2)

EFFECTIVE PERIOD OF WITHDRAWAL: 07/26/20 - 07/26/20.

HEARING REQUEST RECEIVED DATE: 09/08/2011

ELIGIBLE FOR RLP (Y/N): NO

PLEASE SCHEDULE AN ADMINISTRATIVE HEARING FOR THE ABOVE SUBJECT.

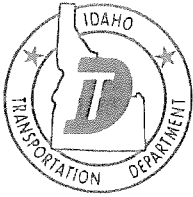
SIGNATURE:

Dei Lo Ray

DATE:

09.08.11

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IDAHO TRANSPORTATION DEPARTMENT

Driver Services • PO Box 7129
Boise ID 83707-1129

(208) 334-8735
ds008@aho.gov

PHONE: (208) 334-8736

PLATZ, CHAUNCEY JACK

SEPTEMBER 08, 2011

1080 PLATZ RD
DEARY

ID 83823

LIC#: [REDACTED]
FILE#: 657A05863731
DOB: [REDACTED]

REQUEST FOR HEARING RECEIVED

THE IDAHO TRANSPORTATION DEPARTMENT HAS RECEIVED YOUR REQUEST FOR AN
ADMINISTRATIVE HEARING FOR:

CDL ALS BAC .08+.DRUGS/INTOX SUBS I.C. 49-335.(2)

THE CASE FILE HAS BEEN REFERRED TO OUR HEARING SECTION FOR SCHEDULING.

YOU WILL BE NOTIFIED AT A LATER DATE OF THE TIME AND INFORMATION
REGARDING THE SCHEDULED HEARING. IN THE MEANTIME, IF YOUR PRIVILEGES
ARE CURRENTLY WITHDRAWN, YOU WILL HAVE NO DRIVING PRIVILEGES, AS THE
WITHDRAWAL WILL NOT BE STAYED.

CC:JAMES E JOHNSON



Notice of Suspension for Failure of Evidentiary Testing
(Advisory for Sections 18-8002 and 18-8002A, Idaho Code)

DR# L11000525

Issued To:		[Redacted]		LATAH		6/24/11		2006	
Last Name		First		Middle		Date of Birth		Time of Arrest	
PLATZ		CHAUNKEY		JACK					
1080 PLATZ RD					10				
Mailing Address					State				
DEARY					ID				
City					Zip				
83823					ISPO082278				
Citation #					Operating CMV? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
					Transporting Hazmat? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

Suspension Advisory

- I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drugs, or other intoxicating substances. You are required by law to take one or more evidentiary test(s) to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional test(s) made by a person of your own choosing. You do not have the right to talk to a lawyer before taking any evidentiary test(s) to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
- If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
 - You are subject to a civil penalty of two hundred fifty dollars (\$250).
 - You have the right to submit a written request within seven (7) days to the Magistrate Court of LATAH County for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
 - If you do not request a hearing or do not prevail at the hearing, the court will sustain the civil penalty and your license will be suspended with absolutely no driving privileges for one (1) year if this is your first refusal; and two (2) years if this is your second refusal within ten (10) years.
- If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
 - I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty (30) days from the date of service on this notice suspending your driver's license or driving privileges. If this is your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for ninety (90) days with absolutely no driving privileges of any kind during the first thirty (30) days. You may request restricted non-commercial driving privileges for the remaining sixty (60) days of the suspension. Restricted driving privileges will not allow you to operate a commercial motor vehicle. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period.
 - You have the right to an administrative hearing on the suspension before the **Idaho Transportation Department** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and received by the department within seven (7) calendar days from the date of service of this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.
- If you become enrolled in and are a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, you shall be eligible for restricted non-commercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that you have served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by you and that you have shown proof of financial responsibility.

NOTICE OF SUSPENSION If you have failed the evidentiary test(s), your driving privileges are hereby suspended per #3 above, commencing thirty (30) days from the date of service of this notice. If a blood or urine test was administered, the department may serve a *Notice of Suspension* upon receipt of the test results.

Date of Service: 6/24/11

This Suspension for Failure or Refusal of the Evidentiary Test(s) is separate from any other Suspension ordered by the Court. Please refer to the back of this Suspension Notice for more information.

Signature of Reporting Officer	Print Name and I.D. Number of Reporting Officer	Agency Code	Telephone Number
[Signature]	CHAD MONTGOMERY 3874 0002	0002	799-5151

Department use only Failure: ☐ Breath ☐ Urine/Blood ☐ Refusal

White Copy - If failure - to ITD; if refusal - to Court

Yellow Copy - to Law Enforcement

Pink Copy - to Court

Goldenrod Copy - to Driver

ITD REC'D JUN 30 2011

037

011

DDS02062 DSP6
MAP1205A PROD

DRIVERS LICENSE SYSTEM
SUSPENSION MASTER FILE MAINTENANCE

09/08/2011
12:38:28
POST DATE:
07/26/2011

REQUESTOR 50032

DRIVER NO JA387223C DL DATE OF BIRTH 11/05/1958

NAME PLATZ, CHAUNCEY JACK
ADDRESS

LIC CLASS A
OPER VALID
CDL DISQAL

1080 PLATZ RD
DEARY

ID 83823

RLP BY

COURT ST ID

SUSP AUTH D REASON C20A

CASE NUMBER A05863731

COURT 657

PROOF N SR22 N

EFFECTIVE DATE 07/26/2011

SUSP TYPE DIS

FEE Y LIC

COURT/RLP ___/___/___

UNTIL ___/___/___

W/J INTRLK

TRAN DATE 07/05/2011

DOC A05863731

OPER LICENSE

SUSP UNTIL DATE ___/___/___
STAY ___/___/___

REIN DATE ___/___/___
UNTIL ___/___/___

REIN CODE
REASON

COMMERCIAL LICENSE

SUSP UNTIL DATE 07/26/2012
STAY ___/___/___

REIN DATE ___/___/___
UNTIL ___/___/___

REIN CODE
REASON

E/R FLAG

ACD CODE

ACD DTL

ACD LINK W0002

OFF-REF

OFF-LOC

EXTENT

PF4-UPD PF6-DEL PF7-DIN1 PF8-RTN PF10-DSP5 PF11-DCV2 PF14-DSP1 PF15-DLR1

038
012

IN THE IDAHO TRANSPORTATION DEPARTMENT

STATE OF IDAHO

In the Matter of the	)	File No. 657A05863731
Driving Privileges of)	
CHAUNCEY JACK PLATZ	)	FINDINGS OF FACT AND
License No. [REDACTED]	)	CONCLUSIONS OF LAW AND
	)	PRELIMINARY ORDER

THIS MATTER came on for hearing on September 27, 2011, by telephone conference. The respondent participated in the hearing through his attorney, James E. Johnson.

The Hearing Examiner, having heard the testimony of the witnesses, and having considered the matter herein, and being advised in the premises and the law, makes the following:

FINDINGS OF FACT

I.

Records of the Department, which records were introduced and received in evidence, demonstrate that while driving a non-commercial motor vehicle, respondent failed a test to determine the driver's alcohol concentration administered by a police officer on June 26, 2011, in Latah County, State of Idaho.

II.

Respondent holds a Class A, B or C driver's license.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

I.

Idaho Code, Section 49-335(2), provides that a person is disqualified from operating a commercial motor vehicle for a period of one year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

II.

IDAPA 39.02.70, regulations of the Department of Transportation preclude the issuance of a restricted permit to respondent for commercial driving.

PRELIMINARY ORDER

Based upon the Findings of Fact and Conclusions of Law entered herein the hearing examiner enters the following preliminary order subject to the terms and conditions set forth in Appendix A, which is attached and made a part of this document;

That CHAUNCEY JACK PLATZ is disqualified from operating a commercial motor vehicle for a period of one year pursuant to the provisions of Idaho Code. His class D privileges shall not be affected. The respondent shall not be allowed entry into the restricted license program for commercial driving.

DATED September 30, 2011.



MICHAEL B. HOWELL
Hearing Examiner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30th day of September, 2011, I mailed a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by depositing the same in the United States mail, postage prepaid, addressed to:

CHAUNCEY JACK PLATZ
c/o James E. Johnson, Atty
604 S. Washington St., #3
Moscow, ID 83843



THIS IS A PRELIMINARY ORDER OF THE HEARING OFFICER. It can and will become final without further action of the Hearing Officer unless any party petitions for reconsideration to the Hearing Officer issuing this Preliminary Order or petitions for review to the Director.

Any party may file a petition for the Hearing Officer's reconsideration of this Preliminary Order within fourteen (14) days of the service date of this Order. The Hearing Officer issuing this Preliminary Order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code. (Parties should not combine a petition for reconsideration to the Hearing Officer with a petition for review to the Director. If a party wishes to petition the Director after receiving a ruling from the Hearing Officer on a petition for reconsideration, the petition to the Director should be filed according to the following provisions.)

Within fourteen (14) days after:

- (a) the service date of this Preliminary Order,
- (b) the service date of the Hearing Officer's denial of a petition for reconsideration from this Preliminary Order, or
- (c) the failure within twenty-one (21) days of the Hearing Officer to grant or deny a petition for reconsideration from this Preliminary Order, any party may in writing petition for review or take exceptions to any part of this Preliminary Order and file briefs in support of the party's position on any issue in this proceeding to the Director. Otherwise, this Preliminary Order will become a Final Order of the Department.

If any party petitions for review before or takes exceptions to this Preliminary Order to the Director, opposing parties shall have twenty-one (21) days to respond before the Director to the petition for review or exceptions. Written briefs in support of or taking exceptions to this Preliminary Order shall be filed with the Director. The Director may review this Preliminary Order on its own motion.

If the Director reviews this Preliminary Order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to this Preliminary Order and may schedule oral argument in the matter before issuing a Final Order. The Director will issue a Final Order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter to the Hearing Officer for further evidentiary hearings if further factual development of the record is necessary before issuing a Final Order.

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this Preliminary Order becomes final, any party aggrieved by the Final Order or Orders previously issued in this case may appeal the Final Order and all previously issued Orders in this case to district court by filing a petition in the district court of the county in which:

- (a) A hearing was held,
- (b) The final agency action was taken,
- (c) The party seeking review of the Order resides, or
- (d) The real property of personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this Preliminary Order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the Order under appeal.

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 882-1362
ISB #6383

CASE NO.

2011 OCT -5 AM 11:25

CLERK OF DISTRICT COURT
LATAH COUNTY

BY....., DEPUTY

Attorney for Mr. Platz

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ	)	Case Number CV-2011- <u>1065</u>
Petitioner,	)	Idaho DL # [REDACTED]
)	
v.	)	PETITION FOR JUDICIAL REVIEW
	)	OF THE SUSPENSION OF
IDAHO TRANSPORTATION	)	COMMERCIAL DRIVING PRIVILEGES
DEPARTMENT,)	
Respondent.	)	Fee Category: L3
_____	)	Fee: \$88.00

Comes now C. Jack Platz, through his attorney James E. Johnson, and petitions
the court for judicial review as follows:

1. Mr. Platz seeks judicial review of the decision of Michael Howell, the Hearing
Officer of the Idaho Transportation Department (ITD), which was signed on September
30, 2011.
2. A copy of the Findings of Fact, Conclusions of Law and Order is attached as
exhibit A.

PETITION FOR JUDICIAL REVIEW OF THE
SUSPENSION OF COMMERCIAL DRIVING PRIVILEGES

COPY 1 042
ITD REC'D OCT 07 2011 016

3. The Petition for Judicial Review is taken to the Second Judicial District in and for the County of Latah.

4. A telephonic hearing was heard before Mr. Howell on September 27, 2011 and was recorded. The recording of the hearing is in the possession of the ITD Hearing Unit, 3311 W. State Street, P.O. Box 7129, Boise, ID 83707-1129. Additional evidence was submitted by the Petitioner by fax transmission and U.S. Mail, but was not considered by the hearing officer at the time of hearing.

5. The issues on judicial review include:

- a. Whether the Hearing Officer erred in sustaining the Notice of Suspension of the commercial driving privileges of C. Jack Platz, in reliance on the ALS suspension found to be sustained by Hearing Officer Skip Carter on August 4, 2011;
- b. Whether C. Jack Platz, during the ALS hearing, met his burden of showing that the law enforcement officer did not follow Idaho State Police Standard Operating Procedures in conducting the breath alcohol test on the day in question such that the test was invalid and Mr. Platz's commercial driving privileges should not be suspended; and
- c. Such issues that may be identified at a later date.

6. A transcript of the proceedings is requested.

7. I certify that:

- a. The service of the Petition has been made upon the Idaho Transportation Department.
- b. A transcript has been requested from the ITD
- c. ITD has been requested to provide a copy of the record; and

c. Counsel for Petitioner certifies that all costs of preparation of the transcript and record will be paid upon receipt of an estimate for those items.

The Petitioner requests Judicial Review based upon the record created before the ITD. Petitioner further requests that upon receipt of the Record and Transcript this matter be set for a scheduling conference for the purpose of entering an order on briefing and hearing.

Dated this 5th day of October, 2011.

15/
James E. Johnson
attorney for Mr. Platz

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by regular first class mail to:

Idaho Transportation Department
CDL- ALS Administrative Hearing Unit
3311 W. State Street
P.O. Box 7129
Boise, ID 83707-1129

and by mail and fax to:

Edwin Litteneker
Special Deputy Attorney General
P.O. Box 321
Lewiston, ID 83501
Fax: 208 798 8387

On the 5th day of October, 2011

15/
James E. Johnson

IN THE IDAHO TRANSPORTATION DEPARTMENT

STATE OF IDAHO

In the Matter of the	)	File No. 657A05863731
Driving Privileges of)	
CHAUNCEY JACK PLATZ	)	FINDINGS OF FACT AND
License No. [REDACTED]	)	CONCLUSIONS OF LAW AND
	)	PRELIMINARY ORDER

THIS MATTER came on for hearing on September 27, 2011, by telephone conference. The respondent participated in the hearing through his attorney, James E. Johnson.

The Hearing Examiner, having heard the testimony of the witnesses, and having considered the matter herein, and being advised in the premises and the law, makes the following:

FINDINGS OF FACT

I.

Records of the Department, which records were introduced and received in evidence, demonstrate that while driving a non-commercial motor vehicle, respondent failed a test to determine the driver's alcohol concentration administered by a police officer on June 26, 2011, in Latah County, State of Idaho.

II.

Respondent holds a Class A, B or C driver's license.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

I.

Idaho Code, Section 49-335(2), provides that a person is disqualified from operating a commercial motor vehicle for a period of one year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

II.

IDAPA 39.02.70, regulations of the Department of Transportation preclude the issuance of a restricted permit to respondent for commercial driving.

PRELIMINARY ORDER

Based upon the Findings of Fact and Conclusions of Law entered herein the hearing examiner enters the following preliminary order subject to the terms and conditions set forth in Appendix A, which is attached and made a part of this document;

That CHAUNCEY JACK PLATZ is disqualified from operating a commercial motor vehicle for a period of one year pursuant to the provisions of Idaho Code. His class D privileges shall not be affected. The respondent shall not be allowed entry into the restricted license program for commercial driving.

DATED September 30, 2011.



MICHAEL B. HOWELL
Hearing Examiner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30th day of September, 2011, I mailed a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by depositing the same in the United States mail, postage prepaid, addressed to:

CHAUNCEY JACK PLATZ
c/o James E. Johnson, Atty
604 S. Washington St., #3
Moscow, ID 83843



THIS IS A PRELIMINARY ORDER OF THE HEARING OFFICER. It can and will become final without further action of the Hearing Officer unless any party petitions for reconsideration to the Hearing Officer issuing this Preliminary Order or petitions for review to the Director.

Any party may file a petition for the Hearing Officer's reconsideration of this Preliminary Order within fourteen (14) days of the service date of this Order. The Hearing Officer issuing this Preliminary Order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code. (Parties should not combine a petition for reconsideration to the Hearing Officer with a petition for review to the Director. If a party wishes to petition the Director after receiving a ruling from the Hearing Officer on a petition for reconsideration, the petition to the Director should be filed according to the following provisions.)

Within fourteen (14) days after:

- (a) the service date of this Preliminary Order,
- (b) the service date of the Hearing Officer's denial of a petition for reconsideration from this Preliminary Order, or
- (c) the failure within twenty-one (21) days of the Hearing Officer to grant or deny a petition for reconsideration from this Preliminary Order, any party may in writing petition for review or take exceptions to any part of this Preliminary Order and file briefs in support of the party's position on any issue in this proceeding to the Director. Otherwise, this Preliminary Order will become a Final Order of the Department.

If any party petitions for review before or takes exceptions to this Preliminary Order to the Director, opposing parties shall have twenty-one (21) days to respond before the Director to the petition for review or exceptions. Written briefs in support of or taking exceptions to this Preliminary Order shall be filed with the Director. The Director may review this Preliminary Order on its own motion.

If the Director reviews this Preliminary Order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to this Preliminary Order and may schedule oral argument in the matter before issuing a Final Order. The Director will issue a Final Order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter to the Hearing Officer for further evidentiary hearings if further factual development of the record is necessary before issuing a Final Order.

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this Preliminary Order becomes final, any party aggrieved by the Final Order or Orders previously issued in this case may appeal the Final Order and all previously issued Orders in this case to district court by filing a petition in the district court of the county in which:

- (a) A hearing was held,
- (b) The final agency action was taken,
- (c) The party seeking review of the Order resides, or
- (d) The real property of personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this Preliminary Order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the Order under appeal.

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 882-1362
ISB #6383

CASE NO

2011 OCT -5 AM 11:31

CLERK OF DISTRICT COURT
LATAH COUNTY

BY _____ DEPUTY

Attorney for Mr. Platz

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ	)	CV-2011- <u>1065</u>
Petitioner,)	
)	
v.	)	MOTION FOR STAY OF
	)	SUSPENSION OF COMMERCIAL
IDAHO TRANSPORTATION	)	DRIVING PRIVILEGES,
DEPARTMENT,	)	PENDING JUDICIAL REVIEW
Respondent.)	
_____)	

Petitioner, by and through his attorney and pursuant to I.C. § 67-5274,
moves this court for entry of an order staying the execution or enforcement of the
Findings of Fact and Conclusions of Law and Order issued by the Idaho
Transportation Department ("ITD") on September 30, 2011, in ITD File No.
657A05863731 and which sustained the suspension of Petitioner's driving
privileges from July 26, 2011, through July 26, 2012, for alleged failure of
evidentiary testing for alcohol concentration pursuant to I.C. §18-8002A.

FILED OCT 07 2011

MOTION FOR STAY, PENDING JUDICIAL REVIEW

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022

Relief is requested upon grounds including, but not limited to, the following:

1. A stay of the Order and suspension of driving privileges is necessary to preserve Petitioner's driving privileges during the pendency of judicial review or appeal. Without such relief, petitioner will be necessarily denied, as a practical matter, the relief which he is seeking by way of his appeal; and
2. A stay is necessary in the interests of justice.

Mr. Edwin Litteneker, the Special Deputy Attorney General, has reviewed this motion and stated that he does not object to it.

Dated October 5, 2011.

131
James E. Johnson
attorney for Mr. Platz

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by regular first class mail to:

Idaho Transportation Department
Administrative Hearing Unit
3311 W. State Street
P.O. Box 7129
Boise, ID 83707-1129

And by mail and fax to:

Edwin Litteneker
Special Deputy Attorney General
P.O. Box 321
Lewiston, Idaho 83501
Fax: 208 798 8387

On the 6th day of October, 2011.

lsj
James E. Johnson

RECEIVED OCT 07 2011

Oct. 5. 2011 2:35PM

No. 3076 P. 1

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 882-1362
ISB #6383

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ	)	Case Number CV-2011- <u>1065</u>
Petitioner,)	
JA387223C)	
v.	)	ORDER FOR STAY OF
	)	SUSPENSION OF COMMERCIAL
IDAHO TRANSPORTATION	)	DRIVING PRIVILEGES,
DEPARTMENT,	)	PENDING JUDICIAL REVIEW
Respondent.)	
_____)	

On motion of Petitioner for stay pending appeal, without objection from
the State, and a Petition for Judicial Review having been filed with this court, and
good cause appearing:

IT IS HEREBY ORDERED that the execution and/or enforcement of the
Findings of Fact and Conclusions of Law and Order issued by the Idaho
Transportation Department ("ITD") on September 30, 2011, in ITD File No.
657A05863731, suspending Petitioner's driving privileges is hereby STAYED
ORDER FOR STAY OF SUSPENSION OF COMMERCIAL
DRIVING PRIVILEGES, PENDING JUDICIAL REVIEW

COPY

during the pendency of judicial review of said order. Petitioner's driving privileges are therefore ordered reinstated during the pendency of judicial review.

DATED this 5th day of October, 2011.

JOHN R. STEGNER

JOHN R. STEGNER
DISTRICT JUDGE

CLERK'S CERTIFICATE OF DELIVERY

I CERTIFY that on this 5th day of October 2011, I caused a true and correct copy of the foregoing ORDER FOR STAY OF SUSPENSION OF COMMERCIAL DRIVING PRIVILEGES, PENDING JUDICIAL REVIEW to be delivered to the following:

Idaho Transportation Department
Drivers Services
P.O. Box 7129
Boise, ID 83707-1129


☐ Courthouse mail
☐ U.S. mail
☐ hand delivered
☒ faxed 208 332 2002

Jay Johnson
Attorney at Law
604 S. Washington
Moscow, Idaho

☐ Courthouse mail
☐ U.S. mail
☒ hand delivered
☐ faxed

Edwin Litteneker
Special Deputy Attorney General
P.O. Box 321
Lewiston, Idaho 83501

☐ Courthouse mail
☐ U.S. mail
☐ hand delivered
☒ faxed 208 798 8387


Deputy Clerk

CASE NO. CV 2011-1065

2011 NOV 23 AM 11:28

CLERK OF DISTRICT COURT
LATAH COUNTY

BY: *Jo* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

CHAUNCEY JACK PLATZ,)	
)	
Petitioner,	)	Case No. CV- 2011-1065
)	
v.	)	ORDER SETTING
	)	BRIEFING SCHEDULE
STATE OF IDAHO,)	
TRANSPORTATION DEPARTMENT,)	
)	
Respondent.)	
_____)	

Chauncey Jack Platz has petitioned this Court for judicial review of the decision issued in this matter by Idaho Transportation Department Hearing Officer Michael Howell.

The transcript was lodged with this Court on November 17, 2011. The Agency Record was lodged with this Court on November 2, 2011. The record is therefore settled in this case. Consequently, a briefing schedule is now appropriate.

It is ORDERED that:

(1) Petitioner's opening brief shall be filed and served no later than December 22, 2011;

(2) Respondent's response brief shall be filed and served no later than January 19, 2012;

(3) Petitioner's reply brief, if any, shall be filed and served no later than, February 9, 2012;

(4) Oral argument is scheduled for February 16, 2012, at 10:00 a.m.

Dated this 23rd day of November 2011.



John R. Stegner
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete, and correct copies of the foregoing order were delivered in the following methods to:


Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
322 Main Street
PO Box 321
Lewiston, ID 83501

☒ U.S. Mail
☐ Overnight Mail
☐ Fax
☐ Hand Delivery

James E. Johnson
604 S. Washington St., #3
Moscow, ID 83843

☒ U.S. Mail
☐ Overnight Mail
☐ Fax
☒ Hand Delivery

On this 23 day of November 2011.


Deputy Clerk

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567 0551
ISB #6383

Attorney for Mr. Platz

CASE NO. CV 2011-1065
2011 DEC 22 AM 8:04
CLERK OF DISTRICT COURT
LATAH COUNTY
BY Ad DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ	)	CV-2011-1065
Petitioner,)	
)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	PETITION FOR JUDICIAL REVIEW,
IDAHO TRANSPORTATION	)	CDL DISQUALIFICATION
DEPARTMENT,)	
Respondent.)	
_____)	

Introduction

Comes now C. Jack Platz, through his attorney James E. Johnson, and submits this memorandum in support of his Petition for Judicial Review, filed October 5,, 2011. The Hearing Officer for the Idaho Transportation Department (ITD) issued a Findings of Fact and Conclusions of Law and Order on September 30, 2011 which disqualified Mr. Platz's from driving a commercial vehicle for one year. Mr. Platz argues that his right to due process has been violated in this case.

Procedural Background

Mr. Platz was stopped for speeding on June 26, 2011. He was charged with DUI, and timely filed a request for an ALS hearing. That matter is under review at this time.

The Idaho Transportation Department sent a Notice of Disqualification to Mr. Platz's named address on July 5, 2011. (R. at 1.) Mr. Platz's parents live at this address, and did not forward the notice to Mr. Platz. He requested a hearing on the matter (R. at 2.), upon receiving word that he was disqualified. The matter was heard before Mr. Michael Howell by telephone on September 27, 2011. Mr. Howell issued his Findings of Fact and Conclusions of Law and Preliminary Order on September 30, 2011. The Preliminary Order states the Mr. Platz may not operate a commercial vehicle for a year. (R. at 13-15.) This Court issued a stay on October 5, 2011, allowing Mr. Platz to drive a commercial vehicle pending review.

Mr. Platz petitioned the Court for judicial review on October 5, 2011.

Statement of Facts

The Statement of Facts in this case is the same as stated in the Petitioner's Memorandum in Support of Petition, which is the ALS companion to this case. Petitioner asks that the Statement of Facts of CV-2011-795 be incorporated into this memorandum.

The additional facts before this Court can be gleaned from the Transcript of the hearing before Mr. Howell in this matter. The Petitioner submits that the Hearing

Officer chose to disregard the submission of proffered evidence (Transcript, p. 2, ll. 7-20.), and chose to rely only on the driving record (Tr., p.3, ll. 9-13; p.5, ll. 4-8).

Standard of Review

(1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; or
- (d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

I.C. § 67-5279.

Statute

(2) Any person who operates a commercial motor vehicle or who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

I.C. § 49-335(2)

Argument

The Idaho Supreme Court has stated, and ITD relies upon this interpretation, that the Administrative License Suspension (ALS) and the the Commercial Driver License disqualification are separate processes. *Wanner v. State of Idaho, Department of Transportation*, --- Idaho ---, 244 P.3d 1250, (Idaho 2011). The *Wanner* decision also states that the ALS process is all-inclusive of a driver's right to drive, and the CDL is a subset of the driving privilege. *Id.*, p. 1256 ("...[T]he 18-8002A suspension governs Wanner's driving privileges in toto, while the 49-335 suspension only applies to a particular subset of driving privileges...")

However, the State and Mr. Wanner were arguing about a much different set of circumstances that are facing Mr. Platz. Wanner lost his right to protest the loss of his commercial privileges because he failed to preserve his overall right to drive, and then had in turn failed to exhaust his administrative remedies. *Id.* Mr. Platz has timely filed

for an ALS hearing, and although he did not prevail in his arguments before the ALS hearing officer, the argument is still live on appeal. He made a record in that case.

In this CDL phase of his license dispute with ITD, Mr. Platz tried to put evidence in front of hearing officer, and it was rejected as irrelevant. (Tr. at 2, 5.) If indeed the processes are truly separate, then the hearing officer needed to allow in evidence which would allow him to make a decision based on first-hand evidence, not just the conclusion of another hearing officer. Although the hearing officer states, "You only get one bite at that apple," (Tr. at 2), he was in turn is short-circuiting the due process which should be afforded to Mr. Platz. Mr. Platz cannot attempt to use his administrative remedies in any meaningful fashion if the question has already been decided.

"Because the suspension of issued driver's licenses involves state action that adjudicates important interests of the licensees, driver's licenses may not be taken away without procedural due process." *In Re Driving Privileges of Bell*, docket number 37865, (Ct.App., October 21, 2011), citing *Dixon v. Love*, 431 U.S. 105, 112 (1977); *State v. Ankney*, 109 Idaho 1, 3-4, 704 P.2d 333, 335-6 (1985); *In re Gibbar*, 143 Idaho 937, 945, 155 P.3d 1176 (Ct.App. 2006). The court must consider three factors in procedural due process challenges: the private interest affected, the risk of erroneous deprivation through the process used (and the probable value of procedural safeguards), and the Government's interest including the function involved and the administrative burdens of additional procedural safeguards. *Id.*, citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The "private interest" factor is Mr. Platz's ability to make a living by driving a commercial vehicle. The government's interest is the safety of people using the highway, and the governmental administrative burden of assuring due process in this case would be requiring the hearing officer to consider evidence. Presumably that already is the function of a hearing officer.

The most troubling factor is the "risk of erroneous deprivation" -- in this case, the refusal to consider evidence resulting in the removal of any chance to rebut ITD's position. While singular reliance on a prior hearing officer's finding avoids the problem of conflicting decisions on the same set of facts, the system employed by this hearing officer results in a "hearing" in name only, because evidence is rejected on a relevance basis when the officer has not considered the case as a whole. No "process" is occurring except pro-forma approval of another functionary's action -- a clerk at ITD has decided that Mr. Platz failed a valid test.

The State maintains that the processes are separate. The hearing officer declined to consider evidence offered which should have directly impacted his ruling. In the ALS companion case and this case, what should be at issue is, was the test performed by the law enforcement officer in a manner consistent with the Standard Operating Procedure protocols of the Idaho State Police? While that question is still undetermined in the companion case, Mr. Platz has not been afforded the right to put evidence before the hearing office in this case. That negates a right to due process, thus qualifies under

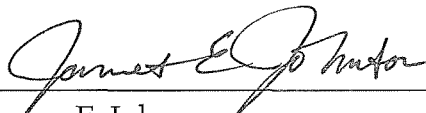
I.C. § 67-5279(2)(a) and (3)(a) to be subject for reversal. It additions, it appears to be arbitrary, capricious, or an abuse of discretion on the part of the hearing officer, further qualifying it as subject to reversal under I.C. § 67-5279(2)(d) and (3)(e).

The issue facing the court is the burden of the ITD to meet constitutional standards when taking away substantial interests of a driver. In this case, a hearing officer denied the right to present evidence, and solely relied on a decision by another officer which is still subject to review. Mr. Platz continues to contend that the test he purportedly failed was not valid, because of the improper administration of the test. If he has lost a valuable interest due to the improper administration of the test, he has been denied due process. In any event, the hearing officer in this case should have heard evidence prior to making a decision, or waited for judicial review of the companion case.

Conclusion

Mr. Platz prays that the Court find that the hearing officer denied him Due Process in this case, and reverse the hearing officer's decision.

Dated December 22, 2011.

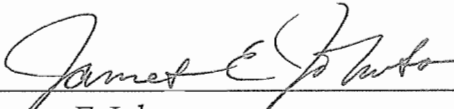

James E. Johnson
attorney for Mr. Platz

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by regular first class mail to:

Edwin Litteneker
Special Deputy Attorney General
P.O. Box 321
Lewiston, Idaho 83501
Fax: 208 798 8387

On the 22 day of December, 2011.


James E. Johnson

LAWRENCE G. WASDEN
Attorney General

Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
322 Main Street
PO Box 321
Lewiston, Idaho 83501
Telephone: (208) 746-0344
Facsimile: (208) 798-8387
ISB No. 2297

CV 2011-1065
CASE NO.

2012 JAN 20 AM 11:28

CLERK OF DISTRICT COURT
LATAH COUNTY

BY SA DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ,	)	Case No. CV 2011-1065
)	
Petitioner,)	
)	
vs.	)	BRIEF OF THE IDAHO
	)	TRANSPORTATION DEPARTMENT
IDAHO TRANSPORTATION)	
DEPARTMENT,)	
)	
Respondent.)	
_____)	

INTRODUCTION

This is the responsive brief of the Idaho Transportation Department. C. Jack Platz has asked the District Court to review the decision of the Department's Hearing Examiner, Michael B. Howell. The Department's Hearing Examiner determined that the requirements for disqualification of Mr. Platz's Commercial Driving Privileges set forth in Idaho Code § 49-335 were complied with and Mr. Platz should have his Commercial Driving Privileges suspended for one year as a result of failing an evidentiary test for alcohol concentration.

FACTUAL BACKGROUND

Chauncey Jack Platz was notified on July 5, 2011 that the Idaho Transportation Department intended to disqualify him from the operation of Commercial Motor Vehicle as a result of his failure of evidentiary testing for breath alcohol (R. p. 001).

Mr. Platz timely requested a hearing with the Idaho Department of Transportation's Hearing Examiner on the proposed Commercial Driver's License Disqualification (R. p. 002).

A hearing was held telephonically on September 27, 2011 (R. p. 007).

The Hearing Examiner entered Findings of Fact, Conclusions of Law and Preliminary Order sustaining the Administrative disqualification of Mr. Platz's Commercial driving privileges on September 30, 2011 (R. p. 019-021).

Mr. Platz timely filed a Petition for Judicial Review and the disqualification has been stayed pending the Court's review.

STANDARD OF REVIEW

Idaho Code § 49-335(2) provides:

Any person who operates a commercial motor vehicle or who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle. (Emphasis Added).

The review of disputed issues of fact must be confined to the agency record for judicial review, Idaho Code § 67-5277.

Idaho Code § 67-5279(1) sets out the scope of review. "The Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Upon judicial review of an administrative hearing officer's order, a Court may not set aside findings unless those findings are "not supported by substantial evidence on the Record as a whole" Idaho

Code § 67-5279(3)(d). *Mahurin v. State of Idaho, Department of Transportation, 140 Idaho 656, 99 P.3d 125, (2004).*

Idaho Code § 67-5279(3) further provides:

When the agency was required by the provisions of this chapter or by other provision of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

The appropriate remedy pursuant to the Idaho Administrative Procedures Act is: "... if the agency action is not affirmed, it shall be set aside, in whole or in part and remanded for further proceedings as necessary." Idaho Code § 67-5279(3).

The interpretation and application of statutory law and administrative rules or regulations present legal issues over which the Court exercises free review, *State v. Perkins, 135 Idaho 17 at 20, 13 P.3d 344, 347 (Ct. App. 2000).*

The Idaho Supreme Court has held that the decision of the Department must be affirmed unless the order violates statutory or constitutional provisions, exceeds the agency's authority, is made upon unlawful procedure, is not supported by substantial evidence or is arbitrary, capricious or an abuse of discretion. *Marshall v. Idaho Transportation Department, 137 Idaho 337, 48 P.3d 666 (2002).*

CHARACTERIZATION OF THE ISSUE

Mr. Platz challenges the Idaho Transportation Department's Hearing Examiner's decision that Mr. Platz should suffer a disqualification from the operation of commercial motor vehicles arguing that Mr. Platz was denied procedural due process based on the conduct of the Idaho Transportation Department's Hearing Examiner.

ARGUMENT

Mr. Platz was represented by Counsel at the September 27, 2011 telephone hearing on the Department's proposed disqualification from the operation of Commercial Motor Vehicles.

Mr. Platz argues that he attempted to introduce evidence into the Record before the Idaho Transportation Department's Hearing Examiner that was rejected as not being relevant, however, the Record does not support Mr. Platz's argument.

The Hearing Examiner doesn't deny Mr. Platz the opportunity to put on any proof instead, the Hearing Examiner indicates that there are choices in the hearing process that Mr. Platz could make given the fact that Mr. Platz had failed a blood alcohol evidentiary test pursuant I.C. § 18-8002A.

The Hearing Examiner indicates that not only was the Hearing Examiner not going to provide Mr. Platz with legal advice but that Mr. Platz had two choices, proceed with the hearing on the Commercial Driver's License disqualification or the Hearing Examiner would make his decision based upon the Record that the Department provided without objection by Mr. Platz to the Hearing Examiner.¹

The Hearing Examiner indicates that he is likely to sustain the Commercial Driver's Disqualification based upon the fact that Mr. Platz has Commercial Driving Privileges that Mr. Platz failed an evidentiary test and suffered an Administrative License Suspension. Those factual findings clearly are supported by the Record. After the Hearing Examiner walked Mr.

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14 I'm not going to give you any legal advice, but basically my
15 experience from past cases is, you know, a review of this is I
16 would probably sustain your client's commercial
17 disqualification at this point and then you could add that to
18 the appeal, and you would have it all down in one fell swoop.
19 If you – if you don't, then you've got this sort of hanging
20 out in limbo until – until the administrative license appeal
21 comes down.

Transcript of Commercial Driver's License Disqualification Hearing, p. 4 LL. 14-21.

Platz's counsel through the alternatives, Mr. Platz's counsel indicates "that's what I'd like you to do and I appreciate your guidance on this" (Tr. p. 5 LL 24-25).²

The question pursuant to I.C. § 49-335 is whether Mr. Platz has Commercial Driving Privileges and whether he failed an evidentiary test for blood alcohol. The Hearing Examiner specifically finds that Mr. Platz has commercial driving privileges and had failed an evidentiary test (R. p. 019). There is no evidence submitted to the Hearing Examiner that Mr. Platz did not fail an evidentiary test. The process due Mr. Platz is not implicated by counsel's knowing and intelligent decisions about what course of action to take.

Mr. Platz was clearly free to create the necessary Record to show that an evidentiary test for alcohol concentration had not been failed based upon the provisions of I.C. § 18-8002A. Mr. Platz knowingly and willingly determined that he would submit the matter to the Hearing Examiner based on the then existing record. Mr. Platz was free to submit evidence for the Hearing Examiner's consideration that may well have been determined by the Hearing Examiner not to be relevant permitting the Court upon judicial review to make the determination as to whether the Hearing Examiner should have considered the evidence. However when the Hearing Examiner is not offered an opportunity to consider the evidence even if the Hearing Examiner indicates that such evidence may not relevant, there is nothing for the Court's review.

² Mr. Platz cites the Court to the Court of Appeals decision in *Wanner v. State, Dept. of Transp.* 150 Idaho 164, 244 P.3d 1250 (2011), where the Court found that the Commercial Driver's License disqualification "is a consequence of the failed evidentiary test that is independent and distinct from the suspension of Wanner's license under 18-8002A." but this argument is not made to the Hearing Examiner.

Mr. Platz received "an opportunity to be heard at a meaningful time in a meaningful manner" *Mathews v. Eldridge* 424 U.S. 319 at 333 (1976). There are sufficient procedural protections in place based upon the process provided Mr. Platz regarding the operation of a Commercial Motor Vehicle.³

Here Mr. Platz was given notice of a hearing, had counsel appear on his behalf and was aware of what information had been provided for purposes of creating the initial Record.

The *Mathews* standard is clearly met with the Department providing Mr. Platz with a hearing before a neutral and disinterested Hearing Examiner.⁴

The private interest here is Mr. Platz's Commercial Driving Privileges. There is little risk of an "erroneous deprivation" based on the process provided Mr. Platz. Mr. Platz offers no additional or procedural safeguards for the Court's consideration. Mr. Platz only argues for a different result not a different process. The Idaho Court has never found the Department's telephonic hearing process to be constitutionally suspect, *In re Suspension of Driver's License of Gibbar*, 143 Idaho 937, 155 P.3d 1176 (Ct. App. 2006).

The Hearing Examiner was not encouraged to come to a different conclusion and was not presented evidence as to why the Hearing Examiner should not rely on the Idaho Transportation Department's Records that an evidentiary test for breath alcohol had been failed by Mr. Platz.

3

Due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976).

⁴ No challenge has been made that the Hearing Examiner was biased or otherwise unduly influenced.

The Public interest implicated here is substantial. The Idaho Courts considering the *Mathews* factors in the context of Administrative License Suspension hearings have found a substantial public interest, *Bell v. Idaho Transp. Dept.* 151 Idaho 659, 262 P.3d 1030 (2011).⁵

The Hearing Examiner did not hear the due process complaints now made to the Court. Mr. Platz did not object to the Hearing procedure suggested by the Hearing Examiner and simply now wants the Court to conclude that the procedures he knowingly participated in without objection or offer of any evidence violates due process. The Court in *Bell* rejects his analysis, declining to resolve an issue on appeal, that was not raised for the Hearing Examiner, *Bell* @ 262 (Citing *Viveros v. State Dept. of Health and Welfare*, 126 Idaho 714, 889 P.2d 1104 (1995)). Such is the case here, Mr. Platz now argues to the Court something that was not presented to the Hearing Examiner.⁶

Mr. Platz really just makes a policy argument that the Idaho Transportation Department should not disqualify Mr. Platz from the operation of a Commercial Motor Vehicle based on his

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Idaho's appellate courts have considered the *Mathews* factors in the context of administrative license suspension hearings and have found that while an individual does have a substantial interest in his or her license, that interest may be subordinated by the State's interest in preventing intoxicated persons from driving, particularly where the individual is entitled to review procedures. See *Ankney*, 109 Idaho at 4–5, 704 P.2d at 336–37 (concluding that the then-applicable statute, I.C. § 49–352, which enabled a police officer to seize a person's driver's license prior to a hearing, did not violate procedural due process because there was not a high risk of erroneous deprivation where the statute provided for a prompt post-seizure review, coupled with the requirement that the police officer requesting the evidentiary test have reasonable grounds to believe the driver is intoxicated); see also *In re McNeely*, 119 Idaho 182, 190–91, 804 P.2d 911, 919–20 (Ct.App.1990) (concluding that the notice provided by the advisory form, as set forth in the applicable statute, did not violate the driver's procedural due process).

Bell v. Idaho Transp. Dept., 151 Idaho 659, 262 P.3d 1030, 1036 (2011).

⁶ The Court, reviewing a Hearing Officer's decision denying Medicaid coverage for a medical procedure, considered whether making arguments in closing argument to the Hearing Officer were sufficient to preserve the issue for judicial review. The Court concludes that such arguments were not presented for review when the arguments were advanced for the first time on appeal @ 717. *Viveros v. State Dept. of Health and Welfare*, 126 Idaho 714, 889 P.2d 1104 (1995).

failure of an evidentiary test. That Legislative decision to disqualify Mr. Platz's Commercial driving privileges is not before the Court.

Finally, Mr. Platz has not shown that the conduct of the hearing is anything other than harmless error. I.R.C.P. 61 directs that the Court should disregard error which does not affect the substantial rights of Mr. Platz. Here the substantial right of Mr. Platz is the right to a hearing prior to his Commercial Driving Privileges being disqualified. Mr. Platz cannot claim now there is any error or misconduct; on the Hearing Examiner's conduct of the Hearing when Mr. Platz does not submit evidence for the Hearing Examiner's consideration. The Hearing Examiner is entitled to consider the evidence of the failed evidentiary test for purposes of disqualifying Mr. Platz from the operation of a Commercial Motor Vehicle.

The information supplied to Mr. Platz by the Hearing Examiner to the extent that it affected the "conduct" of the hearing and not Mr. Platz's Commercial Driving Privileges, was at worst, harmless error. Mr. Platz does not have a "substantial right" in a different hearing process without offering to the Court a showing of how the hearing should be conducted differently, particularly considering that Mr. Platz had the burden. *Myers v. Workmen's Auto Ins. Co.* 140 Idaho 495, 95 P.3d 977 (2004). Further, Mr. Platz does not demonstrate to the Court what evidence should have been considered by the Hearing Examiner which could have produced a different result.

Mr. Platz does not create a record which permits the Court to review whether the evidence which was not offered was relevant. However, even if the evidence not offered should have been relevant, the Court is required to sustain the disqualification if the Hearing Examiner's decision is based on substantial evidence in the Record. Here the Record reflects that Mr. Platz had Commercial Driving Privileges and failed an evidentiary test for breath alcohol.

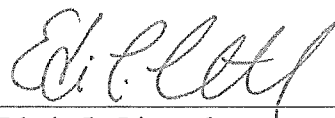
Mr. Platz received an opportunity to be heard, at a reasonable time, in a meaningful manner, receiving such process due him.

It is not a violation of due process for the Hearing Examiner to make a decision upon the Record created. If Mr. Platz would have presented the case he thought appropriate at the appropriate time to show that Mr. Platz had not failed an evidentiary test for breath alcohol and ask the Court for review of that decision there would arguably be a basis for the Court's review. Mr. Platz can't now argue that a violation of due process occurs when he knowingly and willingly participates in a decision making process that results in a decision that he doesn't like, even though it's a decision based on the Record created by Mr. Platz.

CONCLUSION

Mr. Platz has not met his burden. Mr. Platz has received the process due him. The Hearing Examiner's Findings and Conclusions are based on substantial evidence in the record and should be confirmed by the Court. Mr. Platz should be disqualified from the operation of a commercial vehicle for one year.

DATED the 19 day of January 2012.



Edwin L. Litteneker
Special Deputy Attorney General for
Idaho Transportation Department

I DO HEREBY CERTIFY that a true
and correct copy of the foregoing
Document was:

 / Mailed by regular first class mail,
And deposited in the United States
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 Sent by facsimile and mailed by
Regular first class mail, and
Deposited in the United States
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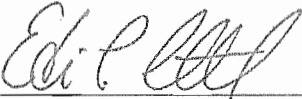
 Sent by Federal Express, overnight
Delivery

 Hand delivered

To:

James E. Johnson
604 S. Washington St. #3
Moscow, Idaho 83843

On the 19 day of January 2012.



Edwin L. Litteneker

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567 0551
ISB #6383

Attorney for Mr. Platz

CV 2011-1065
CASE NO

2012 FEB -2 PM 3:41

CLERK OF DISTRICT COURT
LATAH COUNTY

BY aa

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ	)	CV-2011-1065
Petitioner,)	
v.)	
	)	PETITIONER'S REPLY BRIEF,
IDAHO TRANSPORTATION	)	CDL DISQUALIFICATION
DEPARTMENT,)	
Respondent.)	
_____)	

Jack Platz, through his attorney, hereby responds to the Brief of the Idaho Transportation Department (hereafter "ITD Brief") dated January 19, 2012.

The Idaho Transportation Department bases its argument on the lack of a record on which the Hearing Examiner could decide anything other than in favor of ITD. However, that is exactly the point of contention in this case -- that the Hearing Officer did not consider proffered evidence, indeed deliberately rejected evidence despite the governing rule in this circumstance, and thus the record was not permitted to be made due to the Hearing Officer's procedural approach.

ORIGINAL

ORIGINAL

Applicable Rules

The rule governing the process of an administrative review hearing for a CDL disqualification appears to be IDAPA 04.11.01 et seq. Mr. Platz asserts this after a review of the IDAPA in general, in which there does not appear to be a specific rule addressing CDL disqualification hearings. However:

003. ADMINISTRATIVE APPEALS

All administrative appeals under the Motor Carrier Rules are conducted under IDAPA 04.11.01 et seq, "Idaho Rules of Administrative Procedure of the Attorney General." (4-5-00)

IDAPA 11.13.01.003 Idaho State Police, the Motor Carrier Rules, Administrative Appeals.

As a corollary, (although ITD might dispute the applicability, under *Wanner*) Platz submits the following:

003. ADMINISTRATIVE APPEALS

All Administrative License Suspension appeals pursuant to Section 18-8002A, Idaho Code, shall be governed by this rule and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," in so far as they apply. (10-1-94)

IDAPA 39.02.72.003, Idaho Transportation Department, Rules Governing Administrative License Suspensions, Administrative Appeals.

Given that neither specifically apply, it would appear the the default rule would be the following, which is consistent with both of the above:

001. TITLE AND SCOPE

01. Title. The title of this chapter is "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-93)

02. Scope. This chapter has the following scope: Every state agency that conducts rulemaking or hears contested cases must adopt individual rules of procedure as required by this chapter. Further every state agency

will be considered to have adopted the procedural rules of this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (7-1-93).

IDAPA 04.11.01A.003, Office of the Attorney General, Idaho Rules of Administrative Procedure of the Attorney General, Subchapter A. General Provisions, Title and Scope.

If indeed that is the case, the following two rules apply in the case at bar:

IDAPA 04. OFFICE OF THE ATTORNEY GENERAL

**Rule 04.11.01. IDAHO RULES OF ADMINISTRATIVE
PROCEDURE OF THE ATTORNEY GENERAL**

Subchapter B. CONTESTED CASES

Current through May 2011

157. RIGHTS OF PARTIES AND OF AGENCY STAFF

Subject to Rules 558, 560, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (7-1-93).

IDAPA 04.11.01B.157.

and,

IDAPA 04. OFFICE OF THE ATTORNEY GENERAL

**Rule 04.11.01. IDAHO RULES OF ADMINISTRATIVE
PROCEDURE OF THE ATTORNEY GENERAL**

Subchapter B. CONTESTED CASES

Current through May 2011

600. RULES OF EVIDENCE - EVALUATION OF EVIDENCE

Evidence should be taken by the agency to assist the parties' development of the record, **not excluded to frustrate that development.** The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without

objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. (7-1-93). (Emphasis added.)

IDAPA 04.11.01B.600.

Argument

As stated in the Memorandum in Support of Petition for Judicial Review, CDL Disqualification, Platz states that his Due Process rights were violated in that the Hearing Officer refused to consider them. The following colloquy took place during the hearing:

Hearing Officer: Yeah, that's -- that what I received from the department. I also received from you a detailed history for police call and a copy of it looks like probably a DVD of the arrest.

Mr. Johnson: Yes.

Hearing Officer: Okay.

Mr. Johnson: Well, yes. Have you had a chance to review those?

Hearing Officer: I haven't, because they're not really relevant to these proceedings. You have an opportunity to have all that in the ALS hearing, and this hearing is not a review of the ALS and I will not revisit the facts surrounding the ALS. That's outside the scope of these proceedings.; You only get one bite at that apple.

Transcript of the CDL Disqualification Hearing, September 27, 2011, p. 2.

While Rule 600 allows for the Hearing Officer to exclude evidence which is irrelevant, this officer made no apparent effort to determine what was in the content of the proffered evidence, and declined to find out. He cannot make a determination of relevance without at least viewing the contents, and he stated that he did not.

The Hearing Officer's apparent point is that Mr. Platz had failed an evidentiary test, and therefore the only evidence necessary was that evidence which addressed that apparent "fact." However, the very validity of the test was at issue, and he was aware that the ALS finding of fact were subject to judicial review at the time of this hearing. See, Transcript at pp. 3-4.

What is particularly unsettling is that when the Hearing Officer declined to hear the evidence proffered, he also declined to include it in the Record, thus the State can make a claim that it is not in the Record. The Record alludes to "Correspondence, pages 8-12." Platz, through his attorney, made the apparently unforgivable assumption that such "correspondence" would include correspondence which was proffered to the Hearing Officer; in contrast, the Hearing Office declined to make it part of the Record.¹ Therefore, it is not part of the settled Record. But it is a part of the Transcript before this court that the Hearing Officer rejected evidence based on his own presumptions of what that proffered evidence contained. That makes the finding in this case arbitrary and capricious. The Hearing Officer's exclusion directly frustrated an attempt to make a record, which is proscribed by Rule 600, above.


¹ IRCP 84 addresses judicial review of an agency action. Under Rule 84, the "clerk of the agency" is to prepare a record and lodge it "with the agency," and provide notice of lodging it (with the agency) to the other party. ITD comports with this rule; however, lodging it at the physical location of the agency, in Boise, does not give this Petitioner a reasonable chance to review and object to it, thus in effect stacking the deck against the Petitioner. Requiring the agency to provide the proposed record to the Petitioner would be reasonable, and that would make it consistent with IRCP 5(a), so that all parties would have complete notice of what documents were going to be filed, and thus settled. Making the proposed record at least available by PDF email would be a reasonable change.

What is most frustrating about this sequence is that the ITD has maintained vociferously that the ALS suspension process and the CDL disqualification processes are completely separate and apart, citing *Wanner v. State of Idaho, Department of Transportation*, ----Idaho ----, 244 P.3d 1250 (Idaho 2011). This Hearing Officer obviously contradicts that ruling in that the only evidence he considered is a ruling, under appeal at that time, that Platz had failed an evidentiary test. To decline to review evidence other than that test can only mean that the only dispositive evidence is the ruling of an ITD employee, and that Platz will automatically lose a valuable right without hearing evidence that was proffered to the Hearing Officer.

Conclusion

Mr. Platz prays that the Court find that the hearing officer denied him Due Process in this case, and reverse the hearing officer's decision.

Dated February 2, 2012.


James E. Johnson
attorney for Mr. Platz

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by regular first class mail to:

Edwin Litteneker

Special Deputy Attorney General

P.O. Box 321

Lewiston, Idaho 83501

On the 2 day of February, 2012.


James E. Johnson

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Sheryl L. Engler
Court Reporter
Recording: Z:3/2012-02-16
Time: 10:00 A.M.

Date: February 16, 2012

CHAUNCEY JACK PLATZ,

Petitioner,

vs.

IDAHO TRANSPORTATION
DEPARTMENT,

Respondent.

)
) Case No. CV-2011-1065

) APPEARANCES:

) Petitioner not present, represented by
) James E. Johnson, Moscow, ID

) Respondent represented by counsel,
) Edwin Litteneker, Special Deputy
) Attorney General

Subject of Proceedings: APPELLATE ARGUMENT


This being the time fixed pursuant to order of the Court for hearing appellate argument in this case, Court noted the presence of counsel.

Mr. Johnson argued on behalf of the petitioner. Mr. Litteneker argued on behalf of the respondent. Mr. Johnson argued in rebuttal.

Court considered the matter as having been fully submitted and took the case under advisement.

Court recessed at 10:29 A.M.

Approved by:


John R. Stegner
District Judge

Terry Odenborg
Deputy Clerk

COURT MINUTES

081

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BACKGROUND

The facts and circumstances surrounding the suspension of Platz's driving privileges are set forth in detail in the Memorandum Decision issued this same date in Latah County Case CV-2011-0795. In that case, Platz petitioned this Court for judicial review of the administrative suspension of his driver's license by the Department. In the Memorandum Decision, this Court vacated the Hearing Officer's decision upholding the suspension of Platz's driver's license for failing an evidentiary test for breath alcohol.


ANALYSIS

Because the Hearing Officer's decision in this matter was based upon the finding that Platz had failed an evidentiary test for breath alcohol, and that finding has now been vacated by this Court, the suspension of Platz's commercial driving privileges must also be vacated.

CONCLUSION

The Hearing Officer's Decision is VACATED and this case is REMANDED.

Dated this 2ND day of March 2012.



John R. Stegner
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete, and correct copies of the foregoing Memorandum Opinion were delivered in the following methods to:

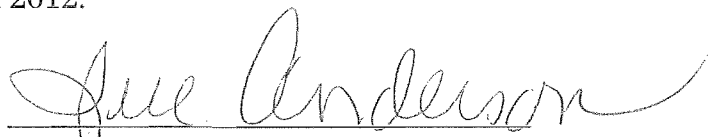
Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
322 Main Street
PO Box 321
Lewiston, ID 83501

☒ U.S. Mail
☐ Overnight Mail
☐ Fax
☐ Hand Delivery

James E. Johnson
604 S. Washington St., #3
Moscow, ID 83843

☒ U.S. Mail
☐ Overnight Mail
☐ Fax
☐ Hand Delivery

On this 2 day of March 2012.


Deputy Clerk

LAWRENCE G. WASDEN
Attorney General

Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
PO Box 321
Lewiston, Idaho 83501
Telephone: (208) 746-0344
ISB No. 2297
Attorneys for Appellant.

CASE NO. CV-11-1065

2012 MAR 20 15:10:56

CLERK OF DISTRICT COURT

RE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

C. JACK PLATZ,	)	Case No. CV 2011-1065
)	
Petitioner/Respondent))	
)	
v.	)	NOTICE OF APPEAL
	)	Fee Category: I.
STATE OF IDAHO	)	Fee: Exempt - I.C. § 67-2301
TRANSPORTATION DEPARTMENT,)	
)	
Respondent/Appellant))	
_____)	

TO: THE ABOVE NAMED RESPONDENT, C. JACK PLATZ, AND YOUR
ATTORNEY, JAMES E. JOHNSON, 604 S. WASHINGTON ST. #3, 83843,
AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, STATE OF IDAHO TRANSPORTATION
DEPARTMENT (hereinafter referred to as "Department"), appeals to the Idaho Supreme
Court from the Memorandum Opinion and Order of the 2nd day of March 2012, entered
by Honorable Judge Stegner vacating the Department's suspension of Mr. Platz's driving
privileges.

2. This appeal is taken on issues of law and fact. It is generally submitted that the issues on appeal will include the District Court's failure to affirm the decision of the Department's Hearing Official suspending the Commercial Driving Privileges based on the Court setting aside an Administrative License Suspension in Latah County Case 2011-0795, particularly in regards to the circumstances of the fifteen minute monitoring period in connection with the administration of an evidentiary test for breath alcohol. A more specific detailing of the issues on appeal will be supplied upon the briefing of this matter.

3. That the Department has a right to appeal to the Idaho Supreme Court as the state agency which originally administratively suspended the driving privileges of Mr. Platz and appeared through its Special Deputy Attorney General in the Petition for Judicial Review proceedings before the Honorable Judge Stegner.

4. The order described in paragraph 1 above is an appealable order under and pursuant to Idaho Appellate Rule 11(f).

5. The Appellant requests the preparation of the standard reporter's transcript from the Oral Argument on Petition for Judicial Review held on February 16, 2012 as defined in Idaho Appellate Rule 25(a).

6. The Appellant requests the clerk's record be prepared as provided for under Idaho Appellate Rule 28(a)(1) including the Department's Administrative Record and the Transcript of the Department's Administrative Hearing.

7. I certify:

(a) That a copy of the Notice of Appeal has been served on the reporter.

(b) That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the State of Idaho is exempt from paying the estimated fee for preparation of the clerk's record per Idaho Code Section 67-2301.

(d) That the State of Idaho is exempt from paying the appellate filing fee per Idaho Code Section 67-2301.

(e) That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 19 day of March, 2012.



Edwin L. Litteneker
Special Deputy Attorney General
Attorney for Idaho Transportation Department

I DO HEREBY CERTIFY that a true
And correct copy of the foregoing
Document was:

X Mailed by regular first class mail,
And deposited in the United States
Post Office

 Sent by facsimile

 Sent by Federal Express, overnight
Delivery

 Hand delivered

To: James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843

Sheryl Engler
Certified Court Reporter
P.O. Box 8606
Moscow, Idaho 83843

On this 19 day of March 2012.



Edwin L. Litteneker



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

December 2, 2011

SPECIAL DEPUTY ATTORNEY GENERAL APPOINTMENT

TO WHOM IT MAY CONCERN:

Edwin L. Litteneker, Attorney at Law, P. O. Box 321, Lewiston, Idaho 83501-0321, is hereby appointed Special Deputy Attorney General for the purpose of representing the State of Idaho in any appeal from a hearing officer's decision in Idaho Transportation Department District 2 filed pursuant to the authority of Idaho Code § 18-8002A, Automatic License Suspension Program.

This letter of appointment will be included in the files of any court case, hearing, or other matter in which he represents the State of Idaho in these appeals. This appointment is effective through December 31, 2012.

Any courtesies you can extend to Mr. Litteneker in his conduct of business for the State of Idaho, as my delegate, will be appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence G. Wasden", is written over a horizontal line.

LAWRENCE G. WASDEN
Attorney General

LGW:blm

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

IN THE MATTER OF THE DRIVER'S
LICENSE SUSPENSION OF CHAUNCEY
JACK PLATZ

CHAUNCE JACK PLATZ

Petitioner-Respondent,

v.

STATE OF IDAHO, DEPARTMENT
OF TRANSPORTATION,

Respondent-Appellant.

Supreme Court No. 39806-2012

CLERK'S CERTIFICATE
RE: EXHIBITS

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the Transcript of the Administrative License Suspension Hearing held on September 27, 2011, and the Transcript of the Appellate Argument held on February 16, 2012, will be lodged with the Clerk of the Supreme Court in accordance with the Appellate Rules and will be lodged as an exhibit as provided by Rule 31(a)(3), IAR.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 30th day of May 2012.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk

CLERK'S CERTIFICATE RE: EXHIBITS - 1

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

IN THE MATTER OF THE DRIVER'S
LICENSE SUSPENSION OF CHAUNCEY
JACK PLATZ

CHAUNCEY JACK PLATZ,

Petitioner-Respondent,

v.

STATE OF IDAHO, DEPARTMENT
OF TRANSPORTATION,

Respondent-Appellant.

SUPREME COURT NO. 39806-2012

CLERK'S CERTIFICATE

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the above and foregoing transcript in the above entitled cause was compiled and bound under my direction as, and is a true, full, complete and correct transcript of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 3rd day of May 2012.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

IN THE MATTER OF THE DRIVER'S)
LICENSE SUSPENSION OF CHAUNCEY)
JACK PLATZ)
_____)

CHAUNCEY JACK PLATZ,)
Petitioner-Respondent,)

v.)

STATE OF IDAHO, DEPARTMENT)
OF TRANSPORTATION,)
Respondent-Appellant.)
_____)

SUPREME COURT NO. 39806-2012

CERTIFICATE OF SERVICE

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that I have mailed, by United States mail, one copy of the Clerk's Record to each of the attorneys of record in this cause as follows:

EDWIN L. LITTENEKER
SPECIAL DEPUTY ATTORNEY GENERAL
322 MAIN STREET
LEWISTON, ID 83501

JAMES E. JOHNSON
604 SOUTH WASHINGTON ST. #3
MOSCOW, ID 83843

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 30th day of May 2012.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk